IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO.17628 of 2003

Between:

P.S. Sastry, S/o Sri P.V. Krishna Murthy,
R/o H. No. 22-39, R.K. Nagar 1st Lane, Malkajgiri,
Hyderabad.

...PETITIONER

AND

1. A.P.State Cooperative Marketing Federation Limited, 5-9-58/B, 7th Floor, Parisram Bhavan, Basheerbagh, Hyderabad-500 004, represented by its Managing Director.

2. Deputy Director (Marketing), A.P. State Cooperative Marketing Federation Limited, 5-9-58/B, 7th Floor, Parisram Bhavan, Basheerbagh, Hyderabad-500 004.

3. Sri Obaidur Rahaman, Deputy Director (Marketing) A.P. State Cooperative Marketing Federation Limited, 5-9-58/B, 7th Floor, Parisram Bhavan, Basheerbagh, Hyderabad-500 004.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or Writ particularly one in the nature of Writ of Mandamus or any other appropriate writ declaring the proceedings Rc. No. ED/R/5255/200/CTR dated 1-7-2003 placing the petitioner under suspension is illegal and arbitrary; (ii) declare the charge memo Rc. No. ED-R/5255/ctR-PSS/2000 dated 14-7-2003 is illegal and arbitrary; (iii) appointing the 3rd respondent as Enquiry Officer vide

proceedings Rc.ED/R/5255/200/CTR dt 14-07-2003 is in violation of principles of natural justice and consequently direct the respondents to set aside the above proceedings.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondent NOS.1 & 2: MR.Vilas V.Afzal Purkar.

The Court made the following:

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION NO.17628 of 2003

ORDER:

The petitioner was initially appointed as a Junior Executive in the respondent-Federation in the year 1972. Subsequently, he was promoted as Senior Executive in the year 1974. The services of the petitioner were utilized as District Manager from 01.06.1998 to 29.06.2000 and thereafter he was transferred to Nizamabad and from there to Kurnool. He was working at Kurnool when he was placed under suspension by proceedings dated 01.07.2003 by the General Manager, A.P.State Marketing Federation. It is stated in the suspension order that the petitioner while working as a District Manager, Chittoor has made several omissions and commissions in the purchase of tamarind product during the year 1999, causing huge loss to the organization. Therefore, pending enquiry into the irregularities, the petitioner while working as Senior Executive Accountant at the District Office, Kurnool was kept under suspension. The petitioner questioned the said proceedings. The petitioner also questioned the additional charge memo dated 14.07.2003 framing three additional charges for certain irregularities said to have been committed by the petitioner explained in the report submitted by the third respondent. It is further stated that the additional charges were framed on the report filed by the third respondent and the third respondent himself was appointed as a second enquiry officer and therefore, the appointment of the third respondent as enquiry officer is illegal and against the principles of natural justice.

It is further contended by the learned counsel appearing for the petitioner that originally, the disciplinary proceedings were initiated against the petitioner vide charge memo dated 08.09.2000 framing as many as seven charges and Mr.K.Narasimhaiah was appointed as an enquiry officer and the said enquiry officer conducted enquiry, submitted a report and therefore initiation of additional enquiry framing three more charges based on the report of the third respondent and appointment of the enquiry officer, is illegal and unsustainable.

On the other hand, learned counsel appearing for the respondents submits that the first enquiry officer Mr.K.Narasimhaiah was appointed as enquiry officer as the explanation submitted by the petitioner on 14.10.2000 to the charge memo dated 08.09.2000 was not satisfactory. The first enquiry officer, Mr.K.Narasimhaiah conducted enquiry while he was in service, but he retired from service on 31.05.2001 and thereafter he submitted report on 04.08.2001. Therefore, the report submitted by the first enquiry officer after his retirement is illegal and it cannot be said that the enquiry report submitted by Mr.K.Narasimhaiah on 04.08.2001 after his retirement is just and valid. It is stated that after the retirement of Mr.K.Narasimhaiah, the relationship of the employer and the employee ceases to continue and therefore, it cannot be said that he has submitted an independent report. He further submitted that as Mr.K.Narasimhaiah, enquiry officer did not submit his report while he was in office and he submitted his report only after his retirement and therefore, the said report is not valid and legal. It is further stated that the additional charge memo dated 14.07.2003 was only additional charge in addition to the charges framed in the original charge memo dated 08.09.2000 and the second enquiry officer,

Mr.M.Obaidur Rahaman who is the third respondent herein was also retired on 30.09.2004 and therefore, the contention of the learned counsel for the petitioner that the serious prejudice will be caused if the said third respondent conducts the enquiry as the additional charge memo was framed on the notes prepared by the third respondent is no more in existence and he cannot continue as enquiry officer as he also retired from service. It is stated that the respondents will appoint another enquiry officer to conduct the enquiry with regard to the charges framed in the charge memo dated 08.09.2000 and additional charge memo dated 14.07.2003. Though it is stated in the proceedings dated 14.07.2003 that the enquiry officer conducted full enquiry and there is inconsistency in the finding of the enquiry officer, but the learned counsel for the petitioner submitted that the enquiry report submitted by Mr.K.Narasimhaiah cannot be looked into as he is not authorized to submit the report after his retirement and therefore, fresh enquiry will have to be conducted from the stage where the earlier enquiry officer stopped the proceedings before his retirement.

No doubt, as per the judgment of the Supreme court in ***K.R.Deb v. Collector, Central Excise, Shillong*** and judgment of Madras High Court in ***M.Kolandai Gounder v. Divisional Engineer, T.N.E.B***, if in any particular case, there has been no proper enquiry because of some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But the enquiry report once submitted by the previous enquiry officer cannot be set aside on the ground that the report of the

enquiry officer was not given under the supervision of Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion. In the absence of any specific allegation, the management cannot conduct enquiry again and again till it is sufficiently proved the guilt of the employee. I am of the view that the said judgment has no application to the facts of this case as the enquiry report submitted by the earlier enquiry officer, Mr.K.Narasimhaiah on 04.08.2001 itself is unauthorized as he has submitted the said report after his retirement. Mr.K.Narasimhaiah retired on 31.05.2001. Therefore, I am of the view that it is just and proper to conduct enquiry with regard to the original and additional charges from the date when the enquiry proceedings were discontinued before the retirement of Mr.K.Narasimhaiah. Therefore, I am of the opinion that the petitioner is not entitled for any relief.

Accordingly, the Writ Petition is disposed of directing the respondent Nos.1 and 2 to appoint another enquiry officer in the place of the third respondent to continue and conduct the enquiry proceedings from the stage when the enquiry was stopped before the retirement of Mr.K.Narasimhaiah, the first enquiry officer and complete the same as expeditiously as possible, preferably within three months from the date of receipt of a copy of this order. As the petitioner was suspended for the omissions and commissions said to have been caused by him during the year 1999, I am of the view that it is just and proper for the respondents to consider the case of the petitioner for revocation of suspension and pass appropriate orders in accordance with law.

With the above observations, the Writ Petition is disposed of. No order as to

costs.

-

-

_____

(V.ESWARAIAH, J)

19th November 2004

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Managing Director, A.P.State Cooperative Marketing Federation Limited, 5-9-58/B, 7th Floor, Parisram Bhavan, Basheerbagh, Hyderabad-500 004.
2. The Deputy Director (Marketing), A.P. State Cooperative Marketing Federation Limited, 5-9-58/B, 7th Floor, Parisram Bhavan,

Basheerbagh, Hyderabad-500 004.

3. Two CD copies.